

REPRESENTATIVE FOR PETITIONERS:
James O'Donnell, Tax Representative

REPRESENTATIVE FOR RESPONDENT:
Rosemary Mandrici, St. Joseph County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

MARK J. & MICHELLE A. MAHER,)	Petition Nos.: 71-026-13-1-5-20410-15
)	71-026-14-1-5-20437-15
Petitioners,)	
)	Parcel No.: 71-09-19-380-001.000-026
v.)	
)	County: St. Joseph
ST. JOSEPH COUNTY ASSESSOR,)	Township: Portage
)	
Respondent.)	Assessment Years: 2013 and 2014

Appeal from the Final Determination of the
St. Joseph County Property Tax Assessment Board of Appeals

March 6, 2017

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Did the Petitioners prove the 2013 and 2014 assessments were incorrect?

PROCEDURAL HISTORY

2. The Petitioners initiated their 2013 and 2014 appeals with the St. Joseph County Assessor on December 19, 2013, and November 17, 2014, respectively. On July 24, 2015, the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued 2013 and 2014 determinations denying the Petitioners any relief. The Petitioners timely filed 2013 and 2014 Petitions for Review of Assessment (Form 131s) with the Board.
3. On December 6, 2016, the Board's administrative law judge, Jennifer Bippus (ALJ), held a consolidated hearing on the petitions. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The following people were sworn and testified:

For the Petitioners: James O'Donnell, certified tax representative,
Frank Krakowski, certified appraiser.

For the Respondent: Rosemary Mandrici, St. Joseph County Assessor,
Patricia St. Clair, St. Joseph County Deputy Assessor.

5. The Petitioners submitted the following exhibits:¹

Petitioners Exhibit 1: Subject property record card,
Petitioners Exhibit 2: Digital recording of the PTABOA hearing,
Petitioners Exhibit 3: Land Order for the subject property's neighborhood and surrounding neighborhoods,
Petitioners Exhibit 4: Property record cards, Geographical Information System (GIS) maps, and information for "neighboring parcels,"
Petitioners Exhibit 7: Restricted appraisal report of the subject property prepared by Frank Krakowski dated July 10, 2014.

6. The Respondent submitted the following exhibits:

Respondent Exhibit 1: 2013 and 2014 Taxpayer's Notice to Initiate an Appeal (Form 130s),

¹ The Petitioners listed exhibits 5 and 6 on their exhibit cover sheet, but these exhibits were not offered at the hearing.

- Respondent Exhibit 2: 2013 Joint Report by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134),
- Respondent Exhibit 3: 2013 and 2014 Notification of Final Assessments (Form 115s),
- Respondent Exhibit 4: 2013 and 2014 Form 131s,
- Respondent Exhibit 5: 2011-2015 subject property record cards,
- Respondent Exhibit 6: 2013 property record cards for “neighboring parcels,”
- Respondent Exhibit 7: Property record card “memorandum list” for the subject property,
- Respondent Exhibit 8: 2007-2016 valuation history of subject property,
- Respondent Exhibit 9: Pages 27 and 28 from Valuation of Residential Land, pages 96-106 from “Land Valuation” presentation from the Department of Local Government Finance (DLGF) dated January 2011,
- Respondent Exhibit 10: Arial map of the subject property,
- Respondent Exhibit 11: Email from Justin Jesch to Mr. O’Donnell dated November 23, 2016,
- Respondent Exhibit 12: Screen shot of certified mail receipt,
- Respondent Exhibit 13: “Instructions for converting front foot value to square foot value,”
- Respondent Exhibit 14: Land value calculations for Neighborhoods 7126293 and 7126291.

7. The following additional items are recognized as part of the record:

- Board Exhibit A: Form 131s with attachments,
- Board Exhibit B: Hearing notice dated October 26, 2016,
- Board Exhibit C: Hearing sign-in sheet.

8. The property under appeal is a single family residence located at 3607 Sullivan Court in South Bend.

9. The PTABOA determined a 2013 total assessment of \$418,500 (land \$128,500 and improvements \$290,000).

10. The PTABOA determined a 2014 total assessment of \$418,700 (land \$128,500 and improvements \$290,200).

11. On their Form 131, the Petitioners requested the land assessment be reduced to \$59,500 for each year under appeal.² The Petitioners did not dispute the assessed value attributed to the improvements for either year.

OBJECTIONS

12. Ms. Mandrici did not “formally object” to Petitioners’ Exhibit 2, but she stated on the record the exhibit was not included in her “packet of information.” Mr. O’Donnell referred to Petitioners’ Exhibit 2 as a “transcript of the PTABOA hearing.” The exhibit is not a “transcript,” but instead is a digital recording of the PTABOA hearing on a compact disk. To the extent Ms. Mandrici intended her statement to be an objection, the Board infers she is arguing the Petitioners failed to provide the exhibit prior to the hearing. Mr. O’Donnell argued “the recording of the hearing is on Ms. Mandrici’s computer, and Ms. Mandrici provided the compact disk containing the recording to him.” To the extent this was viewed as an objection, the ALJ took the objection under advisement.
13. Both parties were required to exchange copies of their documentary evidence at least five business days prior to the hearing. 52 IAC 2-7-1(b)(1). The exchange requirement allows parties to be better informed and to avoid surprises, and it also promotes an organized, efficient, and fair consideration of the issues at the hearing. Failure to comply with this requirement can be grounds to exclude evidence. 52 IAC 2-7-1(f). However, the Board may waive the evidence-sharing requirements for materials that were submitted or made part of the record at the PTABOA hearing. 52 IAC 2-7-1(d).
14. Ms. Mandrici’s objection is overruled. The recording of the PTABOA hearing is not a surprise, given she provided the recording to Mr. O’Donnell and because she was a party to the PTABOA hearing. Accordingly, the Board concludes the Respondent is not harmed by the inclusion of Petitioners’ Exhibit 2 and the exhibit is admitted. With that being said, the Board notes the recording does not change the outcome here as the

² At the hearing, the Petitioners requested the land assessment be reduced to \$45,806 for each year based on the following calculation: 29,744 square feet x \$1.54.

Board's proceedings are *de novo*, and nothing regarding the PTABOA hearing hindered the Petitioners from presenting their case before the Board.

JURISDICTIONAL FRAMEWORK

15. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONERS' CONTENTIONS

16. The subject property's 2013 and 2014 land assessments are too high. In 2011, the land was assessed at \$64,900. The land assessment increased to \$128,500 in 2013 and remained at that level for 2014. The Respondent erroneously used a front foot rate of \$4.32 per square foot. The front foot rate should be reduced to \$1.54 per square foot. *O'Donnell argument; Pet'rs Ex. 1, 7.*
17. In an effort to prove the land assessment is excessive, the Petitioners submitted a "vacant land only" appraisal prepared by Frank Krakowski, a certified general appraiser. Mr. Krakowski testified that he completed his appraisal in accordance with Uniform Standards of Professional Appraisal Practice (USPAP). Mr. Krakowski valued the land at \$45,806 as of 2011, 2012, and 2013. Mr. Krakowski's value is based on a median of \$1.54 per square foot. Mr. Krakowski developed his median value by examining neighborhood vacant lot listings since 2004. Admittedly, none of the lots have sold despite being listed at under \$2.00 per square foot, but "lots generally sell for 15-30% below listing price." *Krakowski testimony; Pet'rs Ex. 7.*
18. The subject property's subdivision, Erksine Manor, includes "four separate neighborhoods." The subject property's neighborhood (7126293) is comprised of land

assessed at \$4.32 per square foot. However, another neighborhood in the same subdivision (7126062) has land assessments of \$1.46 per square foot. A third neighborhood (7126292) has land assessments ranging from \$0.78 to \$2.75 per square foot. This wide range of land assessments in a single subdivision indicates the Respondent's land values are incorrect. *O'Donnell argument; Pet'rs Ex. 4*

19. Additionally, the Land Order and the methodology utilized in assessing land are flawed. Specifically, according to the International Association of Assessing Officers (IAAO), "all land is valued as vacant and ready for development." Further, "land does not appreciate and there is no reason to raise the land values even if an improvement is included on the land...[T]he land value doesn't go up; the building value goes up." Here, the Respondent incorrectly raised the value of "improved land" while erroneously "creating a separate neighborhood for vacant, undeveloped lots." Also, the Respondent's "methodology of using a land-to-building ratio to value the land in sales of improved properties does not comply with IAAO standards." *O'Donnell argument; Pet'rs Ex. 3.*
20. Finally, at the PTABOA hearing, the Petitioners were not allowed to explain why they were of the opinion the subject property was overvalued because "a PTABOA member was not interested in a methodology argument." *O'Donnell testimony.*

RESPONDENT'S CONTENTIONS

21. The subject property is correctly assessed. The land portion of the assessment was developed utilizing a correct base rate of \$4.32 per square foot. This is the base rate for all "improved properties" in the subdivision. *St. Clair argument; Resp't Ex. 6, 10.*
22. The subject property's subdivision was "stratified" in 2012, and the base rates were changed from front foot values to square foot values. There are several "unique neighborhoods" within Erskine Manor. Vacant lots are considered as "a different neighborhood than improved sales, and they are not trended with improved sales." Further, if there are not enough sales to accurately determine vacant land values, a land-

to-building ratio is utilized to determine land value. Normally, a 15% to 25% factor is utilized. *St. Clair testimony; Mandrici testimony; Resp't Ex. 8, 13, 14.*

BURDEN OF PROOF

23. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
24. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
25. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

26. Here, the parties agree the total assessed value of the property did not increase by more than 5% from 2012 to 2013.³ In fact, the total assessment decreased from \$438,800 in 2012 to \$418,500 in 2013. Accordingly, the Petitioners accepted the burden of proof for 2013. The ALJ made a preliminary determination the Petitioners have the burden of proof for 2013, and the Board adopts the ALJ's ruling. The burden for 2014 assessment year will depend on the Board's findings for 2013.

ANALYSIS

27. Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
28. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2013 assessment, the assessment and valuation date was March 1, 2013. *See* Ind. Code § 6-1.1-4-4.5(f). For a 2014 assessment, the assessment and valuation date was March 1, 2014. *Id.*

³ While the Petitioners contend the 2013 and 2014 appeals are of the land assessment only, neither party raised the argument that the burden-shifting statute should be applied only to the land assessment. On several occasions, the Board has addressed whether Ind. Code § 6-1.1-15-17.2, can be applied piecemeal to only land assessments or only improvement assessments, or whether that statute must be applied to the whole property. The Board has repeatedly held that the statute does not expressly contemplate piecemeal approaches, but was intended to apply to an entire "economic unit." *See Vern R. Grabbe v. Carroll Co. Ass'r*, Ind. Bd. of Tax Rev. Pet. Nos. 08-002-10-1-1-00001, et al. (May 10, 2012); *Rebecca Budreau v. White Co. Ass'r*, Ind. Bd. of Tax Rev. Pet. Nos. 91-020-08-1-5-00058, et al. (July 30, 2012); *Waterford Dev. Corp. v. Elkhart Co. Ass'r*, Ind. Bd. of Tax Rev. Pet. Nos. 20-015-08-1-4-00241, et al. (September 25, 2012); *Mac's Convenience Stores, LLC v. Hamilton Co. Ass'r*, Ind. Bd. of Tax Rev. Pet. No. 29-006-12-1-4-02050 (November 14, 2014).

29. Here, the Petitioners offered arguments and evidence attempting to prove that their land assessment is too high. More specifically, the Petitioners' representative, Mr. O'Donnell, offered argument and his own analysis indicating that he "believes" there are too many neighborhoods in the subject's subdivision, and that resulted in a base rate that is too high. He further argued that the subject property's base rate was incorrectly inflated by the Respondent's consideration of vacant lots as a separate neighborhood.
30. In making these arguments, Mr. O'Donnell focused mainly on the methodology used to compute the assessment. Simply contesting the methodology is insufficient to make a prima face case of error in the assessment. *Eckerling v. Wayne Co. Ass'r*, 841 N.E.2d at 674, 677 (Ind. Tax Ct. 2006). To successfully make a case, the Petitioners needed to show the assessment does not accurately reflect the subject property's market value-in-use. *Id.*; see also *P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899,900 (Ind. Tax Ct. 2006) (explaining that focus is not on the methodology used by the assessor, but instead on determining what the correct value actually is.) Because the Petitioners failed to do this, the majority of their evidence lacks probative evidence.
31. The Petitioners did present some market based evidence, a restricted appraisal report completed by certified general appraiser Frank Krakowski. Mr. Krakowski certified that his limited-scope report complies with USPAP Standards Rule 2-2(c). In his report, he analyzed several vacant properties for sale in the subject property's neighborhood and surrounding neighborhoods. Mr. Krakowski concluded that the subject property's land should be valued at \$45,806 or \$1.54 per square foot.
32. The overriding purpose of real property assessment in Indiana is to determine the market value-in-use of the entire property. Indeed, the Manual defines true tax value as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2. Further, "true tax value may be considered as the price that would induce the owner to sell the real property, and the price at which the buyer would purchase the real property for a

continuation of use of the property for its current use.” *Id.* Here, the Petitioners’ home is situated on the land. Thus, while the Petitioners’ notice of assessment includes a separate value for the land, the land value alone is somewhat immaterial as the Petitioners could not sell only their land. Generally, the Board does not consider land and improvements in a piecemeal manner when the property forms a single economic unit. *See Koziarz v. Marshall Co. Ass’r*, Ind. Bd. of Tax Rev. Pet. No. 50-017-12-1-5-00012 et al. (May 22, 2014) (“[W]hile the Petitioner only appeals the land assessments and not the improvements, he fails to rebut the Respondent’s evidence that the parcels form a single economic unit.”)

33. The Petitioners did not attempt to rebut the fact that the subject property forms a single economic unit. The Petitioners failed to offer any valuation evidence for the “entire economic unit.” Here, the Board is not inclined to consider a piecemeal approach and cherry-pick the land value only. Therefore, the Petitioners failed to make a prima facie case for reducing the subject property’s 2013 assessment.
34. Accordingly, the burden of proof remains with the Petitioners for the 2014 assessment year. For 2014, the Petitioners offered the same evidence and arguments in an attempt to prove the land assessment was incorrect. For the same reasons as discussed above, the Petitioners failed to make a prima facie case for reducing the subject property’s 2014 assessment.

SUMMARY OF FINAL DETERMINATION

35. The Board finds for the Respondent. The 2013 total assessment will remain at \$418,500 and the 2014 total assessment will remain at \$418,700.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.